

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

KENNETH EUGENE SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:23-cv-00656-RAH
)	
JOHN Q. HAMM,)	
Commissioner of the Alabama)	
Department of Corrections,)	
)	
and)	
)	
TERRY RAYBON, Warden,)	
Holman Correctional Facility,)	
)	
Defendants.)	

**Defendants’ Motion to Dismiss Pursuant to Rule 12(b)(1) of the
Federal Rules of Civil Procedure and 42 U.S.C. § 1997e(c)**

Come now Defendants, by and through the Attorney General of the State of Alabama, and move this Honorable Court to dismiss Plaintiff Kenneth Eugene Smith’s complaint. In support of thereof, Defendants show the following:

1. In accordance with Rule 25(a), Defendants note the death during the pendency of this action of Plaintiff Kenneth Eugene Smith. Ivana Hrynkiw, *Alabama executes Kenneth Eugene Smith by new nitrogen gas method for 1988 murder of pastor’s wife*, Al.com (Jan. 26, 2024, 6:35 a.m.), <https://www.al.com/news/birmingham/2024/01/alabama-to-execute-kenneth->

smith-with-unttested-nitrogen-gas-tonight.html. After successful employment of the State's nitrogen hypoxia protocol, in accordance with Alabama law, was Mr. Smith executed on the evening of January 25, 2024. *Id.*

2. Defendants submit that Mr. Smith's death renders this action moot. *Thomas v. Bryant*, 614 F.3d 1288, 1294 (11th Cir. 2010) ("Thomas's death renders moot the declaratory and injunctive relief awarded him by the district court.")

CONCLUSION

For the reasons stated above, the Court should dismiss all claims asserted against Defendants.

Respectfully submitted,

Steve Marshall,
Attorney General

/s/ **Richard D. Anderson**
Richard D. Anderson
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2024, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will send notification of such filing to the following: **Angelique A. Ciliberti, Ashley Brook Burkett, Jeffrey Hutton Horowitz, Robert M. Grass, and Andrew Burns Johnson.**

s/ Richard D. Anderson
Richard D. Anderson
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